

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
Nashville Division**

PLATE LLC,

Plaintiff,

v.

RCTENN, LLC

Defendant.

Case No. _____

PATENT CASE

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Plate, LLC, a Florida limited liability company (“Plate”) by and through undersigned counsel, for its Complaint alleges as follows:

NATURE OF THE ACTION

1. Founded in 2014, Plate is reinventing the way military, law enforcement, and civilians operate firearms. One of Plate’s flagship products lines are its popular ACEM® magazine loading devices. Among the ACEM’s many innovations, the most significant is the ability to successively load center feed pistol magazines, a challenge previously unmet for over a century. Christopher Plate (“Chris”) is the founder and president of Plate, as well as the named inventor on all patents subject to this action.

2. RCTENN, LLC (“RCTENN”) is a manufacturing company specializing in plastic molding, including, injection molding of plastics onto metal parts, design molding, hot stamping, and sonic welding. RCTENN, through a contractual relationship with Elite Tactical Systems, LLC (“ETS”), manufactures certain ETS products that are subject to a patent infringement action filed by Plate against ETS and its officers in the

Eastern District of Tennessee, Case Number, 3:18-CV-265. As the manufacturer of the infringing ETS products, RCTENN also faces liability for patent infringement.

PARTIES

3. Plate is a Florida limited liability company with its principal place of business at 4235 SE 20th, Unit B402, Place Cape Coral, FL 33904.

4. Defendant RCTENN is a Tennessee limited liability company. On information and belief its principal place of business is located at 241 Commerce Way, Gallatin, TN 37066.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over RCTENN because upon information and belief, RCTENN's principle place of business is located in Tennessee.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1), and 1400.

THE ASSERTED PATENTS

8. On August 22, 2017, the USPTO duly and legally issued U.S. Patent No. 9,739,552 ("the '552 Patent"), entitled "Magazine loader," to Chris. A true and correct copy of the '552 Patent is attached as "Exhibit A." Plate is the owner by the Assignment of the '552 Patent and holds all rights and interest in that patent. A true and correct copy of the Assignment is attached as "Exhibit B."

9. On October 24, 2017, the USPTO duly and legally issued U.S. Patent No. 9,797,669 (“the ‘669 Patent”), entitled “Magazine loader,” to Chris. A true and correct copy of the ‘669 Patent is attached as “Exhibit C.” Plate is the owner by the Assignment of the ‘982 Patent and holds all rights and interest in that patent. A true and correct copy of the Assignment is attached as “Exhibit B.”

10. On April 3, 2018, the USPTO duly and legally issued U.S. Patent No. 9,933,220 (“the ‘220 Patent”), entitled “Magazine loader,” to Chris. A true and correct copy of the ‘220 Patent is attached as “Exhibit D.” Plate is the owner of the ‘220 Patent by the Assignment of United States Patent Application 15/713,395. United States Patent Application 15/713,295 was issued as the ‘220 Patent. As such, Plate holds all rights and interest in the ‘220 Patent. A true and correct copy of the Assignment is attached as “Exhibit B.”

11. The ‘552 Patent, ‘669 Patent, and the ‘220 Patent are collectively referred to herein as the “Asserted Patents.”

12. The Asserted Patents are continuations-in-part; the Asserted Patents contain both method and device claims. The ‘552 Patent and the ‘669 Patent contain method claims. The ‘220 Patent contains device and method claims.

FACTUAL BACKGROUND

13. Prior to the issuance of the Asserted Patents, Plate took great efforts to protect its confidential and proprietary information concerning the designs and mechanics of its pistol magazine ammunition loading devices (the “Magazine Loader/s”). Plate did not share confidential and proprietary information regarding the Magazine Loaders with

individuals and entities outside of Plate without executing non-disclosure agreements. Plate properly labeled all confidential information as such. Plate took these efforts because the confidential and proprietary information concerning the Magazine Loaders has independent economic value and to avoid disclosures of prior art.

14. Upon information and belief, RCTENN is engaged as a contract manufacturer for ETS.

15. Prior to the Asserted Patents being issued, Plate granted ETS access to Plate's propriety and confidential information regarding the Magazine Loaders, subject to a non-disclosure and non-compete agreement (the "Plate NDA"). ETS executed the Plate NDA on July 29, 2016. A true and correct copy of the Plate NDA is attached as "Exhibit E."

16. The Plate NDA indicated that its purpose was for Plate to share confidential information with ETS so ETS may evaluate the Magazine Loaders. The Plate NDA also stated that ETS may provide Plate with feedback and information on the Magazine Loaders.

17. After the Plate NDA was executed, Plate provided ETS confidential information regarding the Magazine Loaders, including drawings and designs of the Magazine Loaders, videos of the Magazine Loaders functioning, a Magazine Loader prototype, and one of the patent applications filed with the USPTO.

18. On or about October 4, 2016, an ETS officer contacted Chris regarding the Magazine Loaders. The ETS officer informed Chris that ETS made improvements on Plate's loader design and ETS desired to make a deal for Plate's intellectual property.

Prior to further discussions regarding the deal, ETS requested Plate execute a mutual non-disclosure agreement (the “ETS Mutual NDA”). A true and correct copy of the ETS Mutual NDA is attached as “Exhibit F.”

19. On or about October 5, 2016, Plate executed the ETS Mutual NDA. Shortly thereafter, ETS stopped returning Plate’s calls, text messages, emails, and other attempts to communicate.

20. On or about December 23, 2016, ETS released a promotional video for an ETS pistol magazine loader, which ultimately would be produced and sold as the C.A.M. Loader for Pistol Mags 9mm/.40 (the “ETS Pistol Loader 9mm”).

21. Prior to December of 2016, ETS had never advertised magazine ammunition loaders.

22. On or about June 30, 2017, ETS began selling the ETS Pistol Loader 9mm on the ETS website.

23. Prior to June of 2017, ETS had never sold magazine ammunition loaders.

24. On or about January 23, 2018, ETS began selling ETS pistol Magazine Loader models for .380 caliber and .45 caliber bullets, in addition to the second generation model for 9mm and .40 caliber. The ETS products’ names are as follows: C.A.M. Loader for All Pistol Mags .380 caliber (“ETS Pistol Loader .380”); C.A.M. Loader for All Pistol Mags .45 caliber (“ETS Pistol Loader .45”); GEN II - C.A.M. Loader for All Pistol Mags 9mm/.40 caliber (“ETS Pistol Loader Gen II 9mm”).

25. The ETS Pistol Loader 9mm, ETS Pistol Loader Gen II 9mm, ETS Pistol Loader .380, and ETS Pistol Loader .45 are collectively referred to herein as the “Infringing ETS Products.”

26. The Infringing ETS Products consist of the same core elements, which equally infringe on the Asserted Patents. The minor differences among each of the Infringing ETS Products primarily consist of those needed for the different caliber sizes, as well as other superficial variations.

27. Upon information and belief, as a contract manufacturer for ETS, RCTENN manufactured all or nearly all of the Infringing ETS Products that have been sold and distributed into interstate commerce.

28. Upon information and belief, as a contract manufacturer for ETS, RCTENN continues to manufacture all or nearly all of the Infringing ETS Products that ETS sells and distributes into interstate commerce.

29. Upon information and belief, RCTENN has manufactured, and ETS has sold, approximately 40,000-50,000 units of the Infringing ETS Products since June 2017.

30. Upon information and belief, RCTENN has received substantial financial consideration from ETS for manufacturing the Infringing ETS Products.

31. Upon information and belief, RCTENN has received written notice from Plate that RCTENN is infringing the Asserted Patents by manufacturing the Infringing ETS Products for ETS.

32. On or about January 23, 2018, Plate mailed a cease and desist letter to RCTENN’s principle place of business at 241 Commerce Way, Gallatin, TN 37066

(“Plate Cease and Desist 1”). Plate Cease and Desist 1, informed its recipients about the patents issued to Plate at the time, specifically including the ‘552 Patent and the ‘669 Patent. Plate Cease and Desist 1 also informed its recipients that the Infringing ETS Products infringed Plate’s then issued patents. Finally, Plate Cease and Desist 1 included copies of the ‘552 Patent and the ‘669 Patent, including the patents’ claims and drawing sheets. A true and correct copy of Plate Cease and Desist 2 is attached as “Exhibit G.”

33. On or about April 6, 2018, Plate mailed a second cease and desist letter to RCTENN’s principle place of business at 241 Commerce Way, Gallatin, TN 37066 (“Plate Cease and Desist 2”). Plate Cease and Desist 2, informed its recipients that the ‘220 Patent was issued. Plate Cease and Desist 2 reaffirmed Plate’s demand that its recipients stop infringing the Asserted Patents as originally demanded in Plate Cease and Desist 1. Finally, Plate Cease and Desist 2 included copies of all the Asserted Patents, including the Asserted Patents’ claims and drawing sheets. A true and correct copy of Plate Cease and Desist 3 is attached as “Exhibit H.”

34. Plate brings this action to recover the just compensation it is owed for RCTENN’S past infringement, and to prevent RCTENN from continuing to benefit from infringing the Asserted Patents in the future without authorization or compensation to Plate.

COUNT I – INFRINGEMENT OF THE ‘552 PATENT

35. Plate incorporates and realleges all preceding paragraphs as if set forth fully hereinafter.

36. RCTENN has directly infringed and continues to directly infringe, literally or under the doctrine of equivalents, claims 1-6 of the '552 Patent in violation of 35 U.S.C. §271(a) by making, manufacturing, using, marketing, offering to sell, and selling, directly and through intermediaries, in this District and elsewhere in the United States, the Infringing ETS Products.

37. For example, the Infringing ETS Products infringe claim 1 of the '552 Patent, which provides as follows:

1. A method of using an ammunition magazine loader to load a plurality of ammunition rounds into an ammunition magazine having a follower, a spring providing a spring force biasing the follower upwardly, and a magazine shape, with each round respectively including first and second case ends and a pivot point, and with the magazine loader comprising a main body having a first main body end, a second main body end, and a main body length, a rounds recess, extending along the main body length, and having first and second rounds recess ends, a rounds recess bottom, first and second rounds recess sides, and first and second rounds recess ledges, with the rounds recess bottom, first rounds recess side, and first rounds recess ledge defining a first rounds cavity between the rounds recess bottom and the first rounds recess ledge, with the rounds recess bottom, second rounds recess side, and second rounds recess ledge defining a second rounds cavity between the rounds recess bottom and the second rounds recess ledge, the rounds recess being shaped to hold the rounds therein with each first case end positioned within the first rounds cavity and under the first rounds recess ledge and with each second case end positioned within the second rounds cavity and under the second rounds recess ledge, the second rounds recess end being positioned at the second main body end, and at least a portion of the rounds recess being shaped to accept each round into the rounds recess, a rounds abutment, connected to the loader, and at least partially positioned within the rounds recess and at the first rounds recess end, a magazine recess, in communication with the rounds recess, and positioned at the first main body end, the magazine recess being complementarily shaped to the magazine shape to retain the magazine in a fixed position within the magazine recess and the first rounds recess end opens into the magazine recess, said method comprising:

a. positioning the magazine within the magazine recess;

b. introducing the rounds into the rounds recess; and

c. with a structure, pushing the rounds, via a last round, towards and into the magazine, such that as the rounds are slidably moved out of the rounds recess through the second rounds recess end, the pivot point of each round contacts the rounds abutment to angle each second case end towards the magazine recess, and when an exiting round exits the rounds recess, the exiting round abuts and forces at least one of the follower and a pre-loaded round in the magazine downwardly into the magazine against the spring force as the exiting round enters the magazine.

38. The Infringing ETS Products are ammunition magazine loaders that load a plurality of ammunition rounds into an ammunition magazine having a follower, a spring biasing the follower upwardly, and a magazine shape.

39. The Infringing ETS Products main body includes a first main body end, a second main body end, a main body length, and an upper surface.

40. The Infringing ETS Products include a rounds recess that extends along main body length. The Infringing ETS Products have first and second rounds recess ends. The Infringing ETS Products have a rounds recess bottom, first and second rounds recess sides, first and second rounds recess ledges, and first and second cavities. Specifically note that The Infringing ETS Products ledges meet and are formed into each other. The Infringing ETS Products rounds recess is shaped to hold rounds exactly in the same claimed positions. The Infringing ETS Products second rounds recess end is positioned at second main body end. The Infringing ETS Products second rounds recess end is shaped to accept each round into rounds recess.

41. The Infringing ETS Products include a rounds abutment that is connected to the loader and is at least partially positioned within rounds recess and at first rounds recess end.

42. The Infringing ETS Products include a magazine recess in communication with the rounds recess and positioned at first main body end. The Infringing ETS Products magazine recess is complementarily shaped to magazine shape to retain magazine in fixed position within magazine recess. The Infringing ETS Products first rounds recess end opens into their magazine recess.

43. Use directions for the Infringing ETS Products instruct users to seat magazine all the way into the loader.

44. When the Infringing ETS Products plunger is compressed towards magazine, a plurality of rounds are introduced into the rounds recess.

45. The Infringing ETS Products plunger pushes the rounds, via a last round, towards and into magazine. With the Infringing ETS Products, as rounds are slidably moved out of rounds recess through first rounds recess end, the pivot point of each round contacts rounds abutment to angle each second case end towards magazine recess, and when an exiting round exits rounds recess, the exiting round abuts and forces the follower or a pre-loaded round downwardly into magazine against spring force.

46. By way of the Plate Cease and Desist 1 letter, Plate has properly provided written notice to RCTENN of the '552 Patent Plate holds and how the ETS Infringing Products infringe the '552 Patent.

COUNT II – INFRINGEMENT OF THE ‘669 PATENT

47. Plate incorporates and realleges all preceding paragraphs as if set forth fully hereinafter.

48. RCTENN has directly infringed and continues to directly infringe, literally or under the doctrine of equivalents, claims 1, 22, and 23 of the ‘669 Patent in violation of 35 U.S.C. §271(a) by making, manufacturing, using, marketing, offering to sell, and selling, directly and through intermediaries, in this District and elsewhere in the United States, the Infringing ETS Products.

49. For example, the Infringing ETS Products infringe claim 1 of the ‘669 Patent, which provides as follows:

1. A method of using an ammunition magazine loader to load a plurality of ammunition rounds into an ammunition magazine having a follower, a spring providing a spring force biasing the follower upwardly, and a magazine shape, with each round respectively including first and second rounds ends and a pivot point, and with the magazine loader comprising a main body having a first main body end, a second main body end, and a main body length, a rounds recess, extending along the main body length, and having first and second rounds recess ends, a rounds recess bottom, first and second rounds recess sides, and first and second rounds recess ledges, with the rounds recess bottom, first rounds recess side, and first rounds recess ledge defining a first rounds cavity between the rounds recess bottom and the first rounds recess ledge, with the rounds recess bottom, second rounds recess side, and second rounds recess ledge defining a second rounds cavity between the rounds recess bottom and the second rounds recess ledge, and with the rounds recess being shaped to hold the plurality of rounds therein with each respective first rounds end positioned within the first rounds cavity and under the first rounds recess ledge and with each second rounds end positioned within the second rounds cavity and under the second rounds recess ledge, at least a portion of the rounds recess being shaped to accept each round into the rounds recess, the second rounds recess side terminating at a first downwardly angled portion, and the first rounds recess side including a second downwardly angled portion, and a magazine recess in communication with the rounds recess and positioned

at the first main body end, the magazine recess being complementarily shaped to the magazine shape to retain the magazine in a fixed position within the magazine recess, said method comprising:

a. positioning the magazine within the magazine recess;

b. introducing the rounds into the rounds recess; and

c. with a structure, pushing the rounds, via a last round, towards and into the magazine, such that as the plurality of rounds are moved towards the magazine, the pivot point of each round successively contacts the second downwardly angled portion to pivot the second rounds end of each successive round towards the magazine, the second rounds end of each successive round passes over the first downwardly angled portion, and when an exiting round exits the rounds recess, the exiting round abuts and forces at least one of the follower and a pre-loaded round in the magazine downwardly into the magazine against the spring force as the exiting round enters the magazine.

50. The Infringing ETS Products are ammunition magazine loaders that load a plurality of ammunition rounds into an ammunition magazine having a follower, a spring biasing the follower upwardly, and a magazine shape. The Infringing ETS Products interact with each round based on the round's first case end, second case end, and pivot point.

51. The Infringing ETS Products main body includes a first main body end, a second main body end, and a main body length.

52. The Infringing ETS Products include a rounds recess that extends along main body length. The Infringing ETS Products have first and second rounds recess ends. The Infringing ETS Products have a rounds recess bottom, first and second rounds recess sides, first and second rounds recess ledges, and first and second cavities. Specifically note that The Infringing ETS Products ledges meet and are formed into each other. The

Infringing ETS Products first and second cavities are defined with the same structure as claimed. As per the immediately preceding note, The Infringing ETS Products ledges meet and are formed into each other in a continuous manner. The Infringing ETS Products rounds recess is shaped to hold rounds exactly in the same claimed positions. The Infringing ETS Products second rounds recess end is shaped to accept each round into rounds recess. The Infringing ETS Products second rounds recess side terminates at a first downwardly angled portion that opens in the said magazine recess. The Infringing ETS Products first rounds recess side includes a second downwardly angled portion.

53. The Infringing ETS Products include a magazine recess in communication with the rounds recess and positioned at first main body end. The Infringing ETS Products magazine recess is complementarily shaped to magazine shape to retain magazine in fixed position within magazine recess.

54. Use directions for the Infringing ETS Products instruct users to seat magazine all the way into the loader.

55. When the Infringing ETS Products plunger is compressed towards magazine, a plurality of rounds are introduced into the rounds recess.

56. The Infringing ETS Products plunger pushes the rounds, via a last round, towards the magazine, the pivot point of each round successively contacts the second downwardly angled portion to pivot the second rounds end of each successive round towards the magazine, the second rounds end of each successive round passes over the first downwardly angled portion, and when an exiting round exits rounds recess, the

exiting round abuts and forces the follower or a pre-loaded round downwardly into magazine against spring force.

57. By way of the Plate Cease and Desist 1 letter, Plate has properly provided written notice to RCTENN of the '669 Patent Plate holds and how the ETS Infringing Products infringe the '669 Patent.

COUNT III – INFRINGEMENT OF THE '220 PATENT

58. Plate incorporates and realleges all preceding paragraphs as if set forth fully hereinafter.

59. RCTENN has directly infringed and continues to directly infringe, literally or under the doctrine of equivalents, claims 1-38 of the '220 Patent in violation of 35 U.S.C. §271(a) by making, manufacturing, using, marketing, offering to sell, and selling, directly and through intermediaries, in this District and elsewhere in the United States, the Infringing ETS Products.

60. For example, the Infringing ETS Products infringe claim 1 of the '220 Patent, which provides as follows:

1. A method of using an ammunition magazine loader to load a plurality of ammunition rounds into an ammunition magazine having a follower, a spring providing a spring force biasing the follower upwardly, and a magazine shape, with each round respectively including a first case end, a second case end opposite the first case end, and a pivot point, and with the magazine loader comprising a main body having first and second main body ends, a magazine cavity, formed within the main body end, and complimentarily shaped to the magazine shape to retain the magazine in a fixed position within the magazine cavity, a rounds cavity, formed within the main body, and having first and second rounds cavity ends, the first rounds cavity end being in communication with the magazine cavity, the rounds cavity being defined in part by first and second rounds cavity slides, at least one upper rounds cavity abutment, and at least one lower rounds

cavity abutment being positioned to abuttingly limit movement of the rounds along a movement place when the rounds exit the rounds cavity, and at least a portion of the rounds cavity being shaped to accept each round into the rounds cavity, and a rounds abutment, at least partially positioned, within the rounds cavity, and at the first rounds cavity end, said method comprising:

- a. positioning the magazine within the magazine cavity;
- b. introducing the rounds into the rounds cavity; and
- c. with a structure, pushing the rounds, via a last round, towards and into the magazine, such that as the rounds are moved towards the magazine, the pivot point of each round successively contacts the rounds abutment to angle the second rounds end of each successive round towards the magazine, and when an existing round exits the rounds cavity, the exiting round abuts and forces at least one of the follower and a pre-loaded round in the magazine into the magazine against the spring force as the existing round enters the magazine.

61. The Infringing ETS Products are ammunition magazine loaders that load a plurality of ammunition rounds into an ammunition magazine having a follower, a spring biasing the follower upwardly, and a magazine shape. The Infringing ETS Products interact with each round based on the round's first case end, second case end, and pivot point.

62. The Infringing ETS Products main body includes a first main body end and a second main body end.

63. The Infringing ETS Products include a magazine cavity positioned at first main body end. The Infringing ETS Products magazine cavity is complementarily shaped to magazine shape to retain magazine in fixed position within magazine cavity.

64. The Infringing ETS Products include a rounds cavity formed within the main body. The Infringing ETS Products have first and second rounds cavity ends. The

Infringing ETS Products include a magazine cavity in communication with the rounds cavity end. The Infringing ETS Products have first and second rounds cavity sides, upper and lower rounds cavity abutments, and first and second cavities. The Infringing ETS Products rounds cavity is shaped to hold rounds exactly in same claimed positions. The Infringing ETS Products have a rounds abutment positioned within said rounds cavity and at the first rounds cavity end.

65. Use directions for the Infringing ETS Products instruct users to seat magazine all the way into the loader.

66. When the Infringing ETS Products plunger is compressed towards magazine, a plurality of rounds are introduced into the rounds cavity.

67. The Infringing ETS Products plunger pushes the rounds, via a last round, towards the magazine, the pivot point of each round successively contacts the rounds abutment to pivot the second rounds end of each successive round towards the magazine, and when an exiting round exits rounds recess, the exiting round abuts and forces the follower or a pre-loaded round downwardly into magazine against spring force.

68. By way of the Plate Cease and Desist 2 letter, Plate has properly provided written notice to RCTENN of the '220 Patent Plate holds and how the ETS Infringing Products infringe the '220 Patent.

PRAYER FOR RELIEF

WHEREFORE Plate prays for relief, as follows:

A. A judgment that each of Plate's Asserted Patents is valid and enforceable;

B. A judgment that Defendant has directly and indirectly infringed one or more claims of each of Plate's Asserted Patents;

C. An order and judgment permanently enjoining Defendant and Defendant's officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or concert with them, and their parents, subsidiaries, divisions, successors and assigns from further acts of infringement of Plate's Asserted Patents;

D. A judgment awarding Plate all damages adequate to compensate for Defendant's infringement of Plate's Asserted Patents, and in no event less than a reasonable royalty for Defendant's acts of infringement, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

E. A judgment awarding Plate all damages, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with pre-judgment interest;

F. A judgment awarding Plate all of Defendant's profits, pursuant to 35 U.S.C. § 289 together with pre-judgment interest;

G. Actual damages suffered by Plate as a result of Defendant's unlawful conduct, in an amount to be proven at trial, as well as pre-judgment interest as authorized by law;

H. A judgment that this is an exceptional case and an award to Plate of its costs and reasonable attorneys' fees incurred in this action as provided for by 35 U.S.C. § 285;

I. A judgment awarding punitive damages against the Defendants in an amount sufficient to deter similar behavior in the future by the Defendants and to deter others from similar behavior;

J. Such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plate hereby demands trial by jury on all issues raised by the Compliant.

RESPECTFULLY SUBMITTED this ___th day of August, 2018.

By: s/Van R. Irion

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